

Case No. 23-7010  
September Term, 2023

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**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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CONRAD P. SMITH, et al.

*Appellees,*

v.

DONALD J. TRUMP, solely in his personal capacity

*Appellant*

DONALD J. TRUMP FOR PRESIDENT, INC., et al.

*Appellees.*

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**AGREED MOTION TO STAY MANDATE  
PENDING FILING OF PETITION FOR WRIT OF CERTIORARI**

The parties to this consolidated appeal agree to stay the issuance of the mandate in this matter during an abbreviated period for President Trump to file any petition for a writ of certiorari with the Supreme Court of the United States, specifically, until February 15,

2023, and continuing, pending the resolution of any such petition. *See* D.C. Cir. Rule 41.

Good cause exists to grant this motion. This is an extraordinary question of law—the absolute presidential immunity from civil liability for the actions of a former president during his term in office—that must be resolved before this case, and several other cases involving the same assertion of immunity, can be resolved. Other parties and filings, including the United States Department of Justice, have indicated the importance of this issue. *See* Exhibit 1, Mot. United States Expedite Briefing on the Pet. for a Writ of Cert. before J. and for Expedited Merits Briefing if the Ct. Grants the Pet. at 1-2, *United States v. Donald J. Trump*, Case No. 23-624, *cert. denied* (December 22, 2023) (“This case involves issues of exceptional national importance.”); *see also* Exhibit 2, Order, *United States v. Donald J. Trump*, No. 23-3228 (appeal docketed Dec. 8, 2023) (ordering expedited briefing schedule on similar issues).

As the parties agree to the stay, there is no prejudice. Additionally, Supreme Court precedent requires the final resolution of an immunity question before further litigation commences. *Harlow v.*

*Fitzgerald*, 457 U.S. 800, 818 (1982) (“Until this threshold [qualified] immunity question is resolved, discovery should not be allowed.”); *Ashcroft v. Iqbal*, 556 U.S. 662, 685 (2009) (“The basic thrust of the qualified-immunity doctrine is to free officials from the concerns of litigation, including ‘avoidance of disruptive discovery.’” (citation omitted)).

Further, in a related matter, the district court has already recognized that any claim of prejudice is “substantially diminished” because of “the extensive public record that already has been compiled about the President’s actions before and on January 6th.” *Smith, et al. v. Trump, et al.*, No. 1:21-cv-02265, Doc. No. 180 at 2 (D.D.C. Jan. 26, 2023). And because “most relevant records are likely covered by the Presidential Records Act and therefore no longer in the former President’s possession.” *Id.* In addition, this Court has already stayed the mandate in another case pending the resolution of the petition for a writ of certiorari in that appeal. *See* Exhibit 3, *Blassingame et al. v. Trump*, Case No. 22-5069, Dkt. No. 2035345 (D.C. Cir. 2023) (staying mandate pending the resolution of any forthcoming petition for writ of certiorari filed on or before February 15, 2024).

Therefore, good cause exists to stay the mandate pending the outcome of President Trump's petition for writ of certiorari.

Dated: February 5, 2024

Respectfully submitted,

/s/ Jesse R. Binnall

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 450 words, calculated using Microsoft Word's word-count function. This motion also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it was prepared using Microsoft Word in Century 14-point font, a proportionally spaced typeface.

Dated: February 5, 2024

/s/ Jesse R. Binnall  
Jesse R. Binnall

*Attorney for President Donald J.  
Trump*

## CERTIFICATE OF SERVICE

I certify that on February 5, 2024, a copy of the foregoing was filed with the Clerk of the Court using the Court's CM/ECF system, which will send a copy to all counsel of record.

/s/ Jesse R. Binnall  
Jesse R. Binnall

*Attorney for President Donald J.  
Trump*